



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 3, 1996

Mr. Terry Trimble  
Interim Commissioner  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR96-2292

Dear Commissioner Trimble:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102329.

The Texas Department of Human Services (the "department") received a request for information encompassing each job announcement issued by the department, as well as each job announcement's corresponding job analysis worksheet from the department's "Job Description Manual" in Harris County. The request comes from an attorney representing a plaintiff involved in an ongoing lawsuit with the department.<sup>1</sup> The department seeks to withhold the requested documents based on section 552.103 of the Government Code. You have submitted documents you contend are illustrative of the basis of the exception asserted.<sup>2</sup>

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is

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<sup>1</sup>*Gwendolyn P. Wright v. Texas Department of Human Services, et al*, No. 95-32696 (Dist. Ct. Of Harris County, 164th Judicial Dist. of Texas, Jun. 17, 1996).

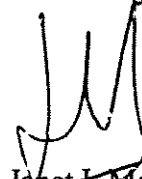
<sup>2</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under section 552.103(a).

The department has submitted to this office a copy of a first amended original petition filed in Harris County in which the plaintiff asserts discrimination in employment and intentional infliction of emotional distress. You have also submitted a copy of the Plaintiff's Fifth Request for Production. After reviewing these pleadings and the submitted documents we conclude that they are directly related to the litigation. Therefore, the department may withhold the requested documents under section 552.103. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/rho

Ref.: ID# 102329

Enclosures: Submitted documents

cc: Ms. Mary Masterson  
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(w/o enclosures)